

Senate File 386 - Introduced

SENATE FILE _____
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SF 184)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to hotel, food establishment, and food processing
2 plant licensing and inspection, providing fees, making
3 penalties applicable, making an appropriation, and providing
4 an effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 1 Section 1. Section 137C.6, Code 2007, is amended to read
1 2 as follows:

1 3 137C.6 AUTHORITY TO ENFORCE.

1 4 1. The director shall regulate, license, and inspect
1 5 hotels and enforce the Iowa hotel sanitation code in Iowa.
1 6 Municipal corporations shall not regulate, license, inspect,
1 7 or collect license fees from hotels except as provided for in
1 8 the Iowa hotel sanitation code.

1 9 2. If a municipal corporation wants its local board of
1 10 health to license, inspect, and otherwise enforce the Iowa
1 11 hotel sanitation code within its jurisdiction, the municipal
1 12 corporation may enter into an agreement to do so with the
1 13 director. The director may enter into the agreement if the
1 14 director finds that the local board of health has adequate
1 15 resources to perform the required functions. A municipal
1 16 corporation may only enter into an agreement to enforce the
1 17 Iowa hotel sanitation code if it also agrees to enforce the
1 18 ~~Iowa food code rules setting minimum standards to protect~~
1 19 ~~consumers from foodborne illness adopted pursuant to section~~

1 20 ~~137F.3~~ 137F.2.

1 21 3. A local board of health that is responsible for
1 22 enforcing the Iowa hotel sanitation code within its
1 23 jurisdiction pursuant to an agreement, shall make an annual
1 24 report to the director providing the following information:

1 25 ~~1-~~ a. The total number of hotel licenses granted or
1 26 renewed during the year.
1 27 ~~2-~~ b. The number of hotel licenses granted or renewed
1 28 during the year broken down into the following categories:
1 29 ~~a-~~ (1) Hotels containing fifteen guest rooms or less.
1 30 ~~b-~~ (2) Hotels containing more than fifteen but less than
1 31 thirty-one guest rooms.
1 32 ~~c-~~ (3) Hotels containing more than thirty but less than
1 33 seventy-six guest rooms.
1 34 ~~d-~~ (4) Hotels containing more than seventy-five but less
1 35 than one hundred fifty guest rooms.

2 1 ~~e-~~ (5) Hotels containing one hundred fifty or more guest
2 2 rooms.

2 3 ~~3-~~ c. The amount of money collected in license fees
2 4 during the year.

2 5 ~~4-~~ d. Other information the director requests.

2 6 4. The director shall monitor local boards of health to
2 7 determine if they are enforcing the Iowa hotel sanitation code
2 8 within their respective jurisdictions. If the director
2 9 determines that the Iowa hotel sanitation code is enforced by
2 10 a local board of health, such enforcement shall be accepted in
2 11 lieu of enforcement by the department in that jurisdiction.
2 12 If the director determines that the Iowa hotel sanitation code
2 13 is not enforced by a local board of health, the director may
2 14 rescind the agreement after reasonable notice and an
2 15 opportunity for a hearing. If the agreement is rescinded, the
2 16 director shall assume responsibility for enforcement in the

2 17 jurisdiction involved.

2 18 Sec. 2. Section 137F.1, subsection 7, Code 2007, is
2 19 amended by striking the subsection.

2 20 Sec. 3. Section 137F.1, subsection 8, unnumbered paragraph
2 21 1, Code 2007, is amended to read as follows:

2 22 "Food establishment" means an operation that stores,
2 23 prepares, packages, serves, vends, or otherwise provides food
2 24 for human consumption and includes a food service operation in
2 25 a salvage or distressed food operation, school, summer camp,
2 26 residential service substance abuse treatment facility,
2 27 halfway house substance abuse treatment facility, correctional
2 28 facility operated by the department of corrections, the state
2 29 training school, or the Iowa juvenile home. "Food
2 30 establishment" does not include the following:

2 31 Sec. 4. Section 137F.2, Code 2007, is amended by striking
2 32 the section and inserting in lieu thereof the following:

2 33 137F.2 ADOPTION BY RULE.

2 34 The department shall, in accordance with chapter 17A, adopt
2 35 rules setting minimum standards for entities covered under
3 1 this chapter to protect consumers from foodborne illness. In
3 2 so doing, the department may adopt by reference, with or
3 3 without amendment, the United States food and drug
3 4 administration food code, which shall be specified by title
3 5 and edition, date of publication, or similar information. The
3 6 rules and standards shall be formulated in consultation with
3 7 municipal corporations under agreement with the department,
3 8 affected state agencies, and industry, professional, and
3 9 consumer groups.

3 10 Sec. 5. Section 137F.3, Code 2007, is amended to read as
3 11 follows:

3 12 137F.3 AUTHORITY TO ENFORCE.

3 13 1. The director shall regulate, license, and inspect food
3 14 establishments and food processing plants and enforce this
3 15 chapter pursuant to rules adopted by the department in
3 16 accordance with chapter 17A. Municipal corporations shall not
3 17 regulate, license, inspect, or collect license fees from food
3 18 establishments and food processing plants, except as provided
3 19 in this section.

3 20 2. A municipal corporation may enter into an agreement
3 21 with the director to provide that the municipal corporation
3 22 shall license, inspect, and otherwise enforce this chapter
3 23 within its jurisdiction. The director may enter into the
3 24 agreement if the director finds that the municipal corporation
3 25 has adequate resources to perform the required functions. A
3 26 municipal corporation may only enter into an agreement to
3 27 enforce the ~~Iowa food code rules setting minimum standards to~~
3 28 protect consumers from foodborne illness adopted pursuant to
3 29 this section 137F.2 if it also agrees to enforce the Iowa
3 30 hotel sanitation code pursuant to section 137C.6. However,
3 31 the department shall license and inspect all food processing
3 32 plants which manufacture, package, or label food products. A
3 33 municipal corporation may license and inspect, as authorized
3 34 by this section, food processing plants whose operations are
3 35 limited to the storage of food products.

4 1 3. If the director enters into an agreement with a
4 2 municipal corporation as provided by this section, the
4 3 director shall provide that the inspection practices of a
4 4 municipal corporation are spot-checked on a regular basis.

4 5 4. A municipal corporation that is responsible for
4 6 enforcing this chapter within its jurisdiction pursuant to an
4 7 agreement shall make an annual report to the director
4 8 providing the following information:

4 9 ~~1-~~ a. The total number of licenses granted or renewed by
4 10 the municipal corporation under this chapter during the year.

4 11 ~~2-~~ b. The number of licenses granted or renewed by the
4 12 municipal corporation under this chapter during the year in
4 13 each of the following categories:

4 14 ~~a-~~ (1) Food establishments.

4 15 ~~b-~~ (2) Food processing plants.

4 16 ~~c-~~ (3) Mobile food units and pushcarts.

4 17 ~~d-~~ (4) Temporary food establishments.

4 18 ~~e-~~ (5) Vending machines.

4 19 ~~3-~~ c. The amount of money collected in license fees
4 20 during the year.

4 21 ~~4-~~ d. Other information the director requests.

4 22 5. The director shall monitor municipal corporations which
4 23 have entered into an agreement pursuant to this section to
4 24 determine if they are enforcing this chapter within their
4 25 respective jurisdictions. If the director determines that
4 26 this chapter is not enforced by a municipal corporation, the
4 27 director may rescind the agreement after reasonable notice and

4 28 an opportunity for a hearing. If the agreement is rescinded,
4 29 the director shall assume responsibility for enforcement in
4 30 the jurisdiction involved.

4 31 Sec. 6. Section 137F.3A, Code 2007, is amended to read as
4 32 follows:

4 33 137F.3A MUNICIPAL CORPORATION INSPECTIONS == CONTINGENT
4 34 APPROPRIATION.

4 35 1. If a municipal corporation operating pursuant to a
5 1 chapter 28E agreement with the department of inspections and
5 2 appeals to enforce this chapter and chapters 137C and 137D
5 3 either fails to renew the agreement effective after July 1,
5 4 2005, ~~but before July 1, 2007,~~ or discontinues ~~prior to July~~
~~5 5 1, 2007,~~ enforcement activities in one or more jurisdictions
5 6 during the agreement time frame, or the department of
5 7 inspections and appeals cancels an agreement ~~prior to July 1,~~
~~5 8 2007,~~ due to noncompliance with the terms of the agreement,
5 9 the department of inspections and appeals may employ
5 10 additional full-time equivalent positions ~~for the fiscal years~~
~~5 11 ending prior to July 1, 2007,~~ to enforce the provisions of the
5 12 chapters, with the approval of the department of management.
5 13 Before approval is given, the director of the department of
5 14 management shall determine that the expenses exceed the funds
5 15 budgeted by the general assembly for food inspections to the
5 16 department of inspections and appeals. The department of
5 17 inspections and appeals may hire no more than one full-time
5 18 equivalent position for each six hundred inspections required
5 19 pursuant to this chapter and chapters 137C and 137D.

5 20 2. Notwithstanding chapter 137D, and sections 137C.9 and
5 21 137F.6, if the conditions described in this section are met,
5 22 fees imposed pursuant to that chapter and those sections shall
5 23 be retained by and are appropriated to the department of
5 24 inspections and appeals ~~for the each fiscal years ending prior~~
~~5 25 to July 1, 2007,~~ year to provide for salaries, support,
5 26 maintenance, and miscellaneous purposes associated with the
5 27 additional inspections.

5 28 ~~3. This section is repealed July 1, 2007.~~

5 29 Sec. 7. Section 137F.6, Code 2007, is amended by adding
5 30 the following new subsections:

5 31 NEW SUBSECTION. 8. Upon transfer of ownership of an
5 32 existing food establishment or food processing plant subject
5 33 to a license fee under subsection 4, 5, or 6, the new owner
5 34 shall pay the last license fee amount paid by the previous
5 35 owner for the first year of licensure. In subsequent years,
6 1 the licensee shall pay the fee specified for the licensee's
6 2 annual gross sales.

6 3 NEW SUBSECTION. 9. A new applicant subject to a license
6 4 fee under subsection 4, 5, or 6, shall pay the license fee
6 5 based on projected gross sales under each of the applicable
6 6 subsections for the first year of licensure. In subsequent
6 7 years, the licensee shall pay the fee specified for the
6 8 licensee's annual gross sales.

6 9 NEW SUBSECTION. 10. For a food establishment or food
6 10 processing plant that is being remodeled or newly constructed
6 11 and that is subject to a license fee under subsection 4, 5, or
6 12 6, the applicant shall pay, in addition to any other fees
6 13 assessed under this chapter, a plan review fee of up to two
6 14 hundred fifty dollars, as determined by the regulatory
6 15 authority.

6 16 NEW SUBSECTION. 11. For a food establishment or food
6 17 processing plant that is being remodeled and that is subject
6 18 to a license fee under subsection 4, 5, or 6, the licensee
6 19 shall pay, in addition to any other fees assessed under this
6 20 chapter, a plan review fee of up to two hundred fifty dollars,
6 21 as determined by the regulatory authority.

6 22 NEW SUBSECTION. 12. If a routine inspection or a
6 23 complaint investigation of a food establishment or food
6 24 processing plant subject to a license fee under subsection 4,
6 25 5, or 6, reveals the presence of one or more critical
6 26 violations and requires one or more physical reinspections, a
6 27 reinspection fee equal to fifty dollars shall be assessed for
6 28 each reinspection. Failure to pay the reinspection fee shall
6 29 subject a food establishment or food processing plant to
6 30 suspension or revocation of the food establishment's or food
6 31 processing plant's license pursuant to section 137F.7 and to
6 32 the penalty provisions of section 137F.17.

6 33 Sec. 8. Section 137F.6, unnumbered paragraph 2, Code 2007,
6 34 is amended to read as follows:

6 35 A food establishment covered by subsections 4 and 5 shall
7 1 be assessed license fees not to exceed seventy-five percent of
7 2 the total fees applicable under both subsections. A food
7 3 establishment covered by subsections 4 and 5 shall not be

7 4 assessed more than one fee under each of those subsections.

7 5 Sec. 9. Section 137F.10, Code 2007, is amended to read as
7 6 follows:

7 7 137F.10 REGULAR INSPECTIONS.

7 8 The appropriate regulatory authority shall provide for the
7 9 inspection of each food establishment and food processing
7 10 plant in this state in accordance with this chapter and with
7 11 rules adopted pursuant to this chapter in accordance with
7 12 chapter 17A. A regulatory authority may enter a food
7 13 establishment or food processing plant at any reasonable hour
7 14 to conduct an inspection. The manager or person in charge of
7 15 the food establishment or food processing plant shall afford
7 16 free access to every part of the premises and render all aid
7 17 and assistance necessary to enable the regulatory authority to
7 18 make a thorough and complete inspection. As part of the
7 19 inspection, the regulatory authority shall provide an
7 20 explanation of the violation or violations cited and provide
7 21 guidance regarding correction and elimination of the violation
7 22 or violations.

7 23 Sec. 10. Section 331.756, subsection 32, Code 2007, is
7 24 amended to read as follows:

7 25 32. Assist the department of inspections and appeals in
7 26 the enforcement of the ~~Iowa food code rules setting minimum~~
7 27 ~~standards to protect consumers from foodborne illness adopted~~
7 28 ~~pursuant to section 137F.2 and the Iowa hotel sanitation code,~~
7 29 as provided in sections 137F.19 and 137C.30.

7 30 Sec. 11. FOOD CODE APPLICABILITY == TEMPORARY PROVISIONS.

7 31 Pending the adoption of rules pursuant to section 137F.2, as
7 32 amended by this Act, the 1997 edition of the United States
7 33 food and drug administration food code, with the amendments or
7 34 exceptions thereto in effect prior to the effective date of
7 35 this Act, shall continue in effect.

8 1 Sec. 12. EFFECTIVE DATE. This Act, being deemed of
8 2 immediate importance, takes effect upon enactment.

8 3 EXPLANATION

8 4 This bill makes changes regarding the licensing and
8 5 inspection of hotels, home food establishments, and food
8 6 establishments.

8 7 The bill provides for the deletion of a specific reference
8 8 to the adoption of the "food code" in Code section 137F.2,
8 9 statutory amendments or exceptions to the food code, providing
8 10 instead for the adoption of rules setting minimum standards to
8 11 protect consumers from foodborne illness. The bill provides
8 12 that the rules may incorporate by reference, with or without
8 13 amendment, the United States food and drug administration food
8 14 code, which if incorporated shall be specified by title and
8 15 edition, date of publication, or similar information, and that
8 16 the rules and standards shall be formulated in consultation
8 17 with municipal corporations under agreement with the
8 18 department, affected state agencies, and industry,
8 19 professional, and consumer groups. Conforming changes are
8 20 made to other Code provisions currently referencing the "food
8 21 code" as referred to in Code chapter 137F. The bill specifies
8 22 that until the rules are adopted, the 1997 edition of the
8 23 United States food and drug administration food code, with the
8 24 amendments or exceptions in effect prior to the effective date
8 25 of the bill, shall continue to apply.

8 26 The bill includes in the definition of a "food
8 27 establishment" in Code section 137F.1 a salvage or distressed
8 28 food operation.

8 29 Code section 137F.3A, enacted in 2006, is amended to
8 30 provide that the department of inspections and appeals may
8 31 retain fees imposed on hotels, home food establishments, and
8 32 on certain food establishments, each fiscal year and use the
8 33 fees retained for costs associated with having the department
8 34 conduct food inspections in jurisdictions where the applicable
8 35 municipal corporation fails to conduct the inspections on or
9 1 after July 1, 2005. Current law allows the department to
9 2 retain and use such fees between July 1, 2005, and July 1,
9 3 2007. The bill eliminates the future repeal of the provision
9 4 on July 1, 2007.

9 5 The bill provides for new categories of fees for
9 6 reinspection and plan review relating to food establishments
9 7 under Code chapter 137F. The bill provides that if a transfer
9 8 of ownership of a certain type of existing food establishment
9 9 or food processing plant licensed under Code section 137F.6
9 10 occurs, which would include a food establishment which
9 11 prepares or serves food for individual portion service
9 12 intended for consumption on-the-premises, a food establishment
9 13 which sells food or food products to consumer customers
9 14 intended for preparation or consumption off-the-premises, or a

9 15 food processing plant, the new owner shall pay the last
9 16 license fee for the first year of licensure, and in subsequent
9 17 years, the fee specified for their annual gross sales.
9 18 The bill additionally provides that an applicant for
9 19 certain new licenses under Code section 137F.6 shall pay the
9 20 license fee based on projected gross sales for the first year
9 21 of licensure and, in subsequent years, the fee specified for
9 22 their annual gross sales. The bill provides that food
9 23 establishments which sell food for preparation or consumption
9 24 off-premises shall not be assessed more than one license fee
9 25 under the provisions applicable to such establishments.
9 26 Further, for certain food establishments and food
9 27 processing plants to be licensed under Code section 137F.6
9 28 that are being newly constructed or remodeled, or for an
9 29 existing licensee undergoing remodeling, the bill provides
9 30 that the applicant or licensee shall pay, in addition to any
9 31 other fees assessed, a plan review fee of up to \$250, as
9 32 determined by the regulatory authority.
9 33 Additionally, the bill provides that if a routine
9 34 inspection or a complaint investigation of certain food
9 35 establishments and food processing plants licensed under Code
10 1 section 137F.6 reveals the presence of one or more critical
10 2 violations and requires one or more physical reinspections, a
10 3 reinspection fee equal to \$50 shall be assessed for each
10 4 reinspection. The bill specifies that failure to pay the
10 5 reinspection fee shall subject a licensee to suspension or
10 6 revocation of the license pursuant to Code section 137F.7, and
10 7 the penalty provisions of Code section 137F.17.
10 8 The bill provides that, as part of a regular inspection, a
10 9 regulatory authority shall explain violations cited and
10 10 provide guidance as to their correction.
10 11 The bill takes effect upon enactment.
10 12 LSB 2412SV 82
10 13 nh:rj/je/5